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IN THE

Supreme Court of the United States

Nos. 2, 3, and 4, Original

OCTOBER TERM, A. D. 1949.

STATE OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
Complainants,
vs.
STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO,
Defendants.
No. 2 Original.

STATE OF MICHIGAN,
Complainant,
vs.
STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, et al.,
Defendants.
No. 3 Original.

STATE OF NEW YORK,
Complainant,
vs.
STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, et al.,
Defendants.
No. 4 Original.

PETITION OF THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO TO THE UNITED STATES SUPREME COURT FOR AN INTERPRETATION AND CLARIFICATION OF THE DECREE OF APRIL 21, 1930.

IVAN A. ELLIOTT,
Attorney General of the State of Illinois,
160 N. La Salle St., Chicago.

ERNST BUEHLER,
Attorney for The Sanitary District of Chicago.
910 S. Michigan Blvd., Chicago.

ROBERT J. BURDETT,
Assistant Attorney General,
ERNST BUEHLER,
LAWRENCE J. FENLON,
Of Counsel.

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PETITION OF THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO TO THE UNITED STATES SUPREME COURT FOR AN INTERPRETATION AND CLARIFICATION OF THE DECREE OF APRIL 21, 1930.

The State of Illinois and the Sanitary District of Chicago, a Municipal Corporation, herein petition this Court for an interpretation and clarification of its decree of April 21, 1930, as enlarged May 22, 1933, in the Case of

Wisconsin et al. v. *Sanitary District of Chicago and the State of Illinois,* Nos. 7, 11 and 12 Original—October Term, 1929 and Nos. 5, 8 and 9 Original—October Term, 1932.

This interpretation and clarification is requested in the light of the marked change in conditions, as hereinafter more fully set forth, which have taken place since the entry of the original decrees herein.

Summary of original actions and decrees.

These original suits were brought by certain Great Lakes States to prevent the State of Illinois and The Sanitary District of Chicago from diverting water from Lake Michigan for the purpose of diluting and carrying away the sewage of Chicago and its environs.

The facts were set forth in detail, and the law governing the parties was established, by the decision of January 14, 1929 (Mr. Chief Justice Taft Opinion), reported in 278 U. S. 367, 73 Law Ed. P. 426. The diversion of water for the disposal of sewage, not having been authorized by Congress, was held illegal and the case was referred a second time to Special Master Hughes to consider the following: the practical measures for disposition of the sewage of The Sanitary District of Chicago through means other than diversion of lake water; the time in which sewage disposal works could be constructed and placed in operation; what reductions in diversion could be made from time to time pending completion of all the sewage disposal works; and what diversion of water was necessary for navigation in the Chicago River after the sewage disposal works were in full operation.

At the Hearing before Special Master Hughes on Re-Reference, the State of Illinois and The Sanitary District of Chicago presented testimony as to the construction pro-

gram required by the Court's decision of January 14, 1929, (278 U. S. 367, 73 Law Ed. p. 426). The future construction program was submitted to the Court as Defendants' Exhibit No. 1387. A copy of said Exhibit is hereto attached.

Based upon the construction program submitted in Defendants' Exhibit No. 1387 and the time estimated for the completion of the respective works, a Decree was entered April 21, 1930, (281 U. S. 679, 74 Law Ed. p. 1123), ordering the progressive reductions in the diversion of water from Lake Michigan to 6,500 cubic feet per second July 1, 1930, to 5,000 c.f.s. December 31, 1935 and to 1,500 c.f.s. December 31, 1938, all on an annual average basis and all in addition to domestic pumpage; also, for the filing by The Sanitary District of semi-annual reports to the Court, July 1 and January 1, setting forth progress on the sewage treatment construction program, the extent and effects of sewage treatment plant operation, and the average diversion of water. The Decree also provided:

> "7. That any of the parties hereto, complainants or defendants, may irrespective of the filing of the above described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy."

In October 1932, complainant States, Wisconsin, Minnesota, Ohio and Michigan, complained of delay in the construction of the sewage treatment program of The Sanitary District of Chicago; and the Court appointed Edward F. McClennen as Special Master to consider this matter. The subsequent hearings developed the fact that the delay was due to a financial stringency, local to the County of

Cook, in the State of Illinois, which county embraced all of The Sanitary District of Chicago, and that for the then halting of construction work The Sanitary District was not responsible as it was then virtually at the end of its financial resources. (289 U. S. 395, 77 Law Ed. p. 1283.)

The Decree of the Court was thereupon enlarged May 22, 1933, (289 U. S. 710, Law Ed. 1465) as follows:

> "On consideration whereon, it is ordered by this Court that the decree of April 21, 1930, be, and the same is hereby, enlarged by the addition of the following provision:
>
> "That the State of Illinois is hereby required to take all necessary steps, including whatever authorizations or requirements, or provisions for the raising, appropriation and application of moneys, may be needed in order to cause and secure the completion of adequate sewage treatment or sewage disposal plants and sewers, together with controlling works to prevent reversals of the Chicago River if such works are necessary, and all other incidental facilities, for the disposition of the sewage of the area embraced within the Sanitary District of Chicago so as to preclude any ground of objection on the part of the State or of any of its municipalities to the reduction of the diversion of the waters of the Great Lakes-St. Lawrence system or watershed to the extent, and at the times and in the manner, provided in this decree.
>
> "And the State of Illinois is hereby required to file in the office of the Clerk of this Court, on or before October 2, 1933, a report to this Court of its action in compliance with this provision."

How the State of Illinois and The Sanitary District of Chicago fulfilled their obligation under the former decrees.

It is and has been since prior to the entry of the original decree in 1930, the legislative policy of the State of Illinois to require municipal bodies to submit construction bond projects to a referendum vote.

Upon the entry of the enlarged decree of May 22, 1933, which placed the financial obligation upon the State of Illinois for the completion of the construction program submitted to the Court as detailed in Exhibit No. 1387, The Sanitary District of Chicago stood ready to assume and continue the primary responsibility for the completion of such program, provided only that the State of Illinois, by appropriate means, would enable it to obtain the financial resources for such completion. The District reasoned that only its taxpayers would benefit by the works required, not those of the State at large. It stood ready to construct them if enabled to do so financially.

Accordingly, in June 1933, the legislature of the State of Illinois authorized the issuance, at that time, of $100,000,000 of Sanitary District of Chicago construction bonds without a referendum. This was duly reported in October 1933.

There was considerable delay in the construction program, even after the authorization of such bonds, as is hereinafter more fully set forth. The proceeds of the $100,000,000 of construction bonds was expended or binding commitments for such program had been entered into by The Sanitary District of Chicago upon the convening of the 66th General Assembly of the State of Illinois on January 2, 1949. Such expenditures and such commitments were in furtherance of the construction program outlined in Sanitary District of Chicago Exhibit No. 1387.

Request was made by The Sanitary District of Chicago, to the 66th General Assembly in 1949, for authority to issue an additional $28,000,000 of non-referendum construction bonds. The purpose for the proceeds of such bonds was in furtherance of the program set forth in said Exhibit No. 1387 (as such program has been subsequently modified), and to complete certain additional works which

have been necessitated by the changed conditions since the original decree, which changed conditions are more fully hereinafter set forth.

Because of the State legislative policy to require such bonds to be submitted to referendum in the municipality requesting them, the 66th General Assembly, 1949, authorized the issuance of only $21,000,000 of non-referendum construction bonds, the proceeds of which were ear-marked for the completion of certain projects included in said Exhibit No. 1387, as shown in Exhibit "A" hereto attached. It was conceded by The Sanitary District of Chicago that the $21,000,000 was all that could be planned and committed by contract prior to the 67th General Assembly which convenes January 2, 1951.

An understanding was worked out concurrently with the authorization by the legislature of the $21,000,000 of construction bonds without referendum, that the State of Illinois and The Sanitary District of Chicago would apply to this Court for an interpretation and clarification of its decree, as enlarged, to ascertain the obligation of the state of Illinois to provide additional funds, in the light of the changed circumstances since the entry of the original decree, which changed circumstances are hereinafter more fully set forth and the work necessitated thereby shown in Exhibit "B" hereto attached.

The construction program carried on by The Sanitary District of Chicago to date, in pursuance of the decree entered herein.

Upon the authorization of the original $100,000,000 in non-referendum construction bonds, as above set forth, such bonds could not be sold at that time because of the financial standing of the municipalities embraced in Cook County, Illinois, which situation was worsened by the seri-

ous national economic conditions existing at that time. However, in December 1933, $41,938,000 of said bonds were sold to the Federal Emergency Administration of Public Works. With the proceeds of such bonds construction on the sewage treatment program outlined in said Exhibit No. 1387 was resumed in January 1934. Adequate progress was thereafter made on the unprecedented construction schedule, but because of the time lost in 1932 and 1933 the entire completion thereof by December 31, 1938 became a physical impossibility.

All of such facts were duly reported in detail to this Court in the semi-annual reports July 1, 1930 to January 1, 1939. In the last report, January 1, 1939, attention was called to the fact that $159,795,331.70 had been expended on sewage treatment construction and that immediately essential work estimated to cost $14,460,000 remained, which it was hoped could be completed within two years.

The two to three year $14,460,000 program of essential work of 1939 became a six year program by 1946, with the cost approximately trebled.

Certain items in the construction program, as originally outlined in said Exhibit No. 1387 submitted to the Court in 1929, were eliminated from the program of essential construction in 1937. The semi-annual report of July 1, 1937, stated that these items, estimated at $22,940,000, could be deferred—some until after 1940 and some until 1945.

The delay in construction due to World War II and its aftermath has caused all such items to now become essential and their costs have been nearly trebled. Some of this work has been financed by funds from the $100,000,000 bond authorization of 1933, some has been included in the $21,000,000 authorization of 1949 (Exhibit A), and the portion not now financed is included in Exhibit B, herewith.

The ultimate reduction in the diversion of water from Lake Michigan to 1,500 cubic feet per second, annual aver-

age, in addition to domestic pumpage, had been made by December 31, 1938, as was reported to this Court in the report of January 1, 1939.

World War II had started in 1939 and, although the United States of America was not at first directly involved, the scarcity of construction materials had by 1940 become serious and by 1941 acute. The Office of Production Management had been organized by the Government and it became necessary to obtain priorities in order to perform any new construction. The request of The Sanitary District of Chicago for priorities for $5,000,000 of its construction as outlined in said Exhibit No. 1387 was denied in October 1941. Work on five large contracts for equipment, previously awarded, was halted because the manufacturers could not obtain steel and other materials without priorities; and these had been denied. Such work was not resumed until the fall of 1945, after V-J Day.

Chaotic conditions have prevailed in the construction industry following the war from 1946 to 1948, and such conditions have militated against progress toward the completion of The Sanitary District sewage treatment construction program.

The change in conditions since entry of the original decree.

On April 21, 1930, The Sanitary District of Chicago embraced 60 cities and villages and an area of 442.35 square miles. Since that time the legislature of the State of Illinois has authorized annexation of additional areas and additional communities at eight different legislative sessions. The area of the district at the present is 470.18 square miles and embraced within this area are 70 cities and villages.

The human population of The Sanitary District was 3,901,569 in 1930, increased 61,745 to 3,963,314 by 1940, and further by about 180,700 to 4,144,000 in 1949. The greatest

portion of this increase, by far, was in the suburban areas. Industrial wastes were equivalent to a population of 1,732,000 in 1930, to 2,082,000 in 1940 and to 3,135,000 in 1949. Total equivalent population was about 5,634,000 in 1930, about 6,045,000 in 1940 and 7,279,000 in 1949. This increase in area and in population or population equivalent was without any action by or on behalf of the officials of the Sanitary District of Chicago.

Since April 21, 1930 the increase in human population of the district, greater since 1940 and largely in the outlying areas, has necessitated the construction of new sewers in areas at that time having none. The increase in total equivalent population, also greater since 1940, has necessitated increased capacity in sewage treatment works and in sewers in areas already served in 1930.

It thus can readily be seen that there are four classes of construction by The Sanitary District of Chicago yet to be accomplished: (a) the remainder of the construction program, as modified, outlined in said Exhibit No. 1387. This is largely provided for by the additional $21,000,000 construction bonds authorized without referendum by the Illinois General Assembly in 1949; (b) enlarged sewers and sewage treatment capacity engendered by the increase of population and industrial wastes in the area embraced within the Sanitary District in 1930; (c) the installation and construction of new sewers or sewer extensions mainly in suburban areas within the Sanitary District in 1930 but not then served with sewers or with sewage treatment works; (d) construction and installation of sewers and extension of sewers in areas annexed to The Sanitary District of Chicago since 1930.

The latter three classes of construction are outlined and set forth in Exhibit B hereto attached. Said projects as so outlined and detailed, constitute the completion of the construction program of The Sanitary District of Chicago.

Future Financing Required.

The only practicable means to assure the proper financing of this program by The Sanitary District of Chicago is for it to apply to the 67th General Assembly in 1951 for authority to sell additional bonds without a referendum at that time to continue the construction of essential sewage facilities.

The State of Illinois and The Sanitary District of Chicago do herewith therefore respectfully petition the Supreme Court for an interpretation and a clarification of its decree of April 21, 1930, as enlarged May 22, 1933, in the case of *Wisconsin et al.* v. *The Sanitary District and the State of Illinois*, to determine—

1. Whether or not the decree of this Court applies to and requires the construction of the uncompleted necessary projects as submitted originally to this Court in Defendants' Exhibit No. 1387, as adjusted to meet the needs and improvements made necessary by increased population;

2. Whether or not said decree also applies to and requires the construction of the necessary sewage disposal facilities to provide for territories annexed to The Sanitary District of Chicago, subsequent to the entry of the original decree.

All of said projects referred to in 1 and 2 are the construction projects detailed in Exhibit "B" attached.

All of which is respectfully submitted.

STATE OF ILLINOIS,

IVAN A. ELLIOTT,
Attorney General.

THE SANITARY DISTRICT OF CHICAGO,
ERNST BUEHLER,
Attorney.

DEFENDANTS' EXHIBIT 1387.

DEFENDANTS' EXHIBIT 1387—Continued

THE SANITARY DISTRICT OF CHICAGO.

Tabulation of Estimates on Sewage Treatment Program Up to 1945 After Dec. 31, 1928.

	Estimated Cost	
DESPLAINES RIVER PROJECT:		
(In its entirety including the proposed Des Plaines Intercepting Sewer extending to the City of Des Plaines, hooking up the sewage of the Des Plaines River Valley and bringing it to the West Side Works)	$ 4,025,000.00	
Hillside Berkeley Outlet Sewer	230,000.00	
		$ 4,255,000.00
CALUMET PROJECT:		
(This project will include enlarging the Calumet Sewage Treatment Works for complete treatment and to take care of the additional territory which is to be brought in)		
Calumet Sewage Treatment Works Enlargement	$11,718,000.00	
Calumet Intercepting Sewers (To bring in Colfax and South Park Avenues areas)	2,359,000.00	
Harvey Intercepting Sewer	1,500,000.00	
Calumet City Intercepting Sewer	1,500,000.00	
California Ave. Outfall Sewer	940,000.00	
Evergreen Park-Mt. Greenwood Sewer	725,000.00	
Blue Island Extension	750,000.00	
California Ave.-Evergreen Pk. Extension	1,000,000.00	
		$20,492,000.00
NORTH SIDE PROJECT:		
North Side Sewage Treatment Works (Enlargement)	$ 700,000.00	
Howard Street Intercepting Sewer	2,268,000.00	
North Shore Relief Sewer	815,000.00	
Additional North Side Int. Sewer	1,000,000.00	
		$ 4,783,000.00

	Estimated Cost	
WEST SIDE PROJECT:		
West Side Sewage Treatment Works (To complete sedimentation plant)	$ 8,679,000.00	
West Side Sewage Treatment Works. (This will include the additional works required for complete treatment)	31,890,000.00	
West Side Intercepting Sewer..... (Remaining contracts)	15,750,000.00	
Additional West Side Intercepting Sewers	2,000,000.00	
Oak Park Intercepting Sewer, District's Share	3,500,000.00	
		$61,819,000.00
SOUTHWEST SIDE PROJECT:		
Southwest Side Sewage Treatment Works	$38,870,000.00	
(This will provide complete treatment)		
Southwest Side Intercepting Sewer..	7,900,000.00	
South Side Intercepting Sewer.....	18,640,000.00	
Racine Avenue Pumping Station....	4,025,000.00	
Connections	943,000.00	
Miscellaneous	439,000.00	
		$70,817,000.00
MISCELLANEOUS PLANTS AND SEWERS:		
Allowance for unforeseen additions or extensions of intercepting sewers and treatment works to provide complete treatment		$10,000,000.00
		$172,166,000.00
Chicago River Controlling Works.....		4,000,000.00
GRAND TOTAL		$176,166,000.00

EXHIBIT "A"

CONSTRUCTION PROGRAM FINANCED BY $21,000,000 OF BONDS AUTHORIZED BY ILLINOIS LEGISLATURE 1949

	Estimated Cost
NORTH SIDE PROJECT	
North Shore Int. Sewer, No. 8	$ 2,970,000
North Shore Int. Sewer, No. 9 (Connections)	130,000
Golf-Glenview Pump. Sta., Add'l. Pump. Cap.	47,000
Total North Side Project	$ 3,147,000
CALUMET PROJECT	
Calumet Int. Sewer, No. 13-A (So. Holland Br.)	$ 1,210,000
Calumet Int. Sewer, No. 13-C (Dolton Branch)	330,000
Calumet Int. Sewer, No. 18 (Ext. along Cal. Sag)	3,080,000
Calumet Int. Sewer, 100% Collection	363,000
Calumet Sewage Tr. Works, Final Settling Tank	44,000
Calumet Sewage Tr. Works, Add'l. Prel. Settl. Tanks	157,000
Oak Lawn Sewage Treatment Works	121,000
Total Calumet Project	$ 5,305,000
WEST-SOUTHWEST PROJECT	
West-Southwest Sewage Treatment Works (11 Contracts)	$ 2,996,000
Racine Ave. Pump. Sta. Extension (5 Contracts)	4,378,000
Racine Ave. Pump. Sta., Div. K (Control Struct.)	440,000
South Side Int. Sewer, No. 5 (Connections)	1,185,000
Upper Des Plaines Int. Sew., No. 10 (North Ave.)	2,200,000
Westchester Pump. Sta., New Pumping Station	280,000
Salt Creek Int. Sewer, No. 1-A (Forest View)	165,000
Southwest Side Int. Sewer, No. 13 (Stickney Twp. Outlet)	440,000
West Side Int. Sewer, Elec. Sewer Controls	396,000
Total West-Southwest Project	$12,480,000
Grand Total	$20,932,000
Say	$21,000,000

1950 FUTURE CONSTRUCTION PROGRAM.

EXHIBIT "B"

Contract	Part of Item in Def. Exhibit 1387	Estimated Cost 1950	Reason For Construction		
			Natural Growth	Area in SDC in 1929 but not sewered	Annexation since 1929
North Side Project					
North Shore Int. Sew., No. 10 (Tower Rd.)	No. Sh. Rel.	$ 1,045,000		$ 1,045,000	
North Side Int. Sew., No. 12 (Howard St.)	Howard St.	6,160,000		6,160,000	
North Side Int. Sew., Pratt Ave. Syphon	Add. N. Side	138,000	$ 138,000		
North Side Int. Sew., Conn. for City Sewers	Add. N. Side	77,000	77,000		
North Side Int. Sew., Revised Controls	Add. N. Side	66,000	66,000		
Harms Rd. Int. Sew., Ext. to Northfield	Howard St.	770,000		770,000	
Evanston Int. Sew., New Outfall and P. S.	None	4,400,000	4,400,000		
Golf-Glenview Int. Sew., Ext. to Northbrook	Howard St.	1,430,000	400,000	800,000	$ 230,000
Calumet Project					
Calumet Sew. Tr. Wks., Add'l. Sludge Drying	Wks. Enl'g.	445,000	445,000		
Calumet Int. Sew., No. 19 (Kedzie Ave.)	Calif. Ave.	2,750,000	200,000	2,400,000	150,000
Calumet Int. Sew., No. 19A (Markham, Bel-Aire)	Calif. Ave.	330,000		330,000	
Calumet Int. Sew., No. 20 (Oak Lawn Outlet)	None	3,850,000			3,850,000
Calumet Int. Sew., Revised Controls	Bl. Is. Ext.	248,000	248,000		
Calumet Sew. Tr. Wks., New Outfall	Wks. Enl'g.	1,100,000	1,100,000		
Calumet City P. S., New Storm Pump. Sta.	Cal. City	495,000	495,000		
95th St. P. S., New Storm Pumps	None	440,000	440,000		
West-Southwest Project					
West-Southwest Tr. Wks., Completion	W. S. Com. Tr.	4,055,000	4,055,000		
Upper DesPlaines Int. Sew., No. 11 (Wellers)	DesPl. Proj.	1,100,000	100,000	300,000	700,000
Upper DesPlaines Int. Sew., 100% Collection	DesPl. Proj.	187,000		187,000	
Salt Creek Int. Sew., No. 2B (Lyons Outlet)	DesPl. Proj.	660,000		660,000	
Salt Creek Int. Sew., Revised Controls	DesPl. Proj.	88,000	88,000		
Southwest Int. Sew., No. 12B (McCook Outlet)	SW. Sewer	110,000	10,000	20,000	80,000
Southwest Int. Sew., Elec. Sew. Controls	SW. Sewer	193,000	193,000		
Southwest Int. Sew., Cont. for City Sew.	SW. Sewer	110,000		110,000	
Broadview-Bellwood Relief Sewer	DesPl. Proj.	2,750,000	150,000	300,000	2,300,000
West Towns Outlet Sewer, No. 4 (Oak Pk. Outlet)	Oak Pk. Sew.	632,000	632,000		
Totals		$33,629,000	$13,287,000	$13,082,000	$ 7,310,000